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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,952	12/05/2001	Peter Kalisch	592050-2018	8674

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FROMMER LAWRENCE & HAUG  
745 FIFTH AVENUE- 10TH FL.  
NEW YORK, NY 10151

EXAMINER
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CHIN, PAUL T

ART UNIT	PAPER NUMBER
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3652

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10/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/937,952		KALISCH ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	PAUL T. CHIN		3652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 January 2009 and 11 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-115 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Jan 9, 2009, has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 11 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant recites a phrase, "pouches are picked up and raised with a gripper mechanism" in claim 9, line 5, by adding a new method of picking up. Specifically, applicant describes on page 3, paragraph 8:

The gripper elements 22 (or in each case one pair) are movable in a direction of arrows 28 and may be operated by compressed air.

It is not clearly understood how "the gripper elements 22" are movable by compressed air in a horizontal movement as shown in figure 4. Fig. 4 shows fingers movable as shown as arrows 28 and it is unclear how the fingers are moved with respect to the member 25.

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Applicant also states on page 3, paragraph 8 :

This is shown in Figure 5 where extensible pistons 30 move in the direction of arrows 32.

It is also pointed out that it is unclear how “the piston 30” are “extensible” in the direction of arrow 32. It is unclear as to how the “pistons” are originally positioned in relation to the gripper element 22, what cause the “piston” to extend.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of “finger-like gripper elements are arranged in a comb-like manner” in claim 9, and is unclear as to how “the fingers” are arranged in “a comb-like manner”.

The word “manner” is not clearly understood.

#### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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7. Claims 9, and 11-15, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Snyder (3,954,165) (see PTO-892).

Snyder (3,954,165) discloses a method for gripping rectangular pouches, comprising picking up the pouches (22,22) with a gripper mechanism having finger-like gripper (72,74) (see Fig. 5) arranged in a substantially comb-like manner wherein the gripper elements are moved by an extensible piston member (80,82) (See Figs. 3 and 5) in a parallel path. Figures 3 and 4 show a gripper assembly (72,74,86) being arranged in a substantially comb-like manner (see Fig. 3) to substantially hold, pickup, and moves the article (22) (Col. 6, lines 5-43). And then, a pusher member (86) pushes the gripped articles in a longitudinal direction.

Re claim 12, an extendible piston (80,82) to clamp a pouch as shown in figure 3.

Re claims 13 and 14, figure 3, as best understood, shows the pouches are gripped in an orientation, which is about zero, less than 60 degree.

Re claim 15, Fig. 3 shows each pouch stands on a horizontal orientation.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 9-11 and 13-15, best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter (4,768,642) (See PTO-892) in view of Carlsson et al. (3,822,528) (see IDS).

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Hunter (4,768,642) discloses a method for handling articles (70), comprising handling the articles by a gripper mechanism having finger-like gripper (26,26,28) (see Figs. 1 and 1A) arranged in a substantially comb-like manner and that moved in a parallel path. Note that the gripper element has parallel arms (30,32) guided by bearings (34,36) to be able to move in a horizontal path and push the articles as shown in figures 1 and 1A. Hunter (4,768,642) also shows another embodiment having a plate (102) in figure 5 to push the articles. Hunter (4,768,642) does not show a method of picking up the articles. However, Carlsson et al. (3,822,528) teaches a gripper element having a horizontal plate (11) and a pivotal end plate (12) to pick up a row of pouches as shown in figures 1-8. Accordingly, it would have been obvious to those skilled in the art to modify the gripper element (28) of Hunter (4,768,642) by providing an end plate (12) of Carlsson et al. (3,822,528) on the distal ends of the Hunter's horizontal plate (28) so that the modified Hunter's device not only push the articles but also pick up the plurality of articles or pouches and moved towards the table (5) (Fig. 1). Also note that it would have been obvious to those skilled in the art to provide the orientation of each pouch between fins (16,16) of the conveyer (12) as a horizontal orientation to stabilize the larger pouches and firmly handle the pouches.

Re claim 10, figures 1 and 1A show at least 5 articles.

Re claim 11, the modification of Hunter's device would provide a pivotal end plate (12) or a substantially movable end plate of Carlsson et al. (3,822,528).

Re claims 13-15, Figures 1-2, as best understood, show the orientation of the articles as required in the recited claims.

### **Response to Arguments**

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10. Applicant's arguments with respect to claims 9-15 have been considered, but they are not persuasive.

**U.S.C 112, First Paragraph**

Applicant asks about the examiner discussion any reference to or paraphrasing of any limitations of claims 11 or 12.

Claim 11 recites "gripper elements between which an upper side of a pouch can be gripped for each pouch to be picked up at lest one of which is movable or has movable elements" and claim 12 further recites "an extendable piston enabling ...a pouch to be picked in clamping manner.

It is not clearly understood how "the gripper elements 22" are movable by compressed air in a horizontal movement as shown in figure 4, filed June 20, 2003. Fig. 4 shows fingers movable as shown as arrows 28 and it is unclear how the fingers (22, 22) are moved with respect to the stationary member 25.

It is also pointed out that it is unclear how "the piston 30" are "extensible" in the direction of arrow 32 as shown in **Fig. 5, filed June 20, 2003**. It is unclear as to how the "pistons" are originally positioned in relation to the gripper element 22, what cause the "piston" to extend.

**Snyder '165**

Applicant argues, "Snyder does not teach or suggest picking up pouches with a gripper mechanism" (3<sup>rd</sup> paragraph of page 6) and "the carrier is not a gripper, and it does not pick up any article" (2<sup>dn</sup> paragraph of page 7).

The arguments are not persuasive.

Claim 9 recites a method for picking up having said pouches are picked up with a gripper mechanism having finger-like gripper elements". Snyder (3,954,165) shows in figures 3

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and 4 a gripper assembly (72,74,86) being arranged in a substantially comb-like manner (72,74 of Fig. 3) to substantially hold, pickup, and moves the article (22) (Col. 6, lines 5-43) and a pusher member (86) pushes the gripped articles in a longitudinal direction. Note figure 5 also shows that the gripper element (72,74,86) are moved in a substantially parallel between adjacent longitudinal sides of adjacent pouches (22,22). Though the grippers (72,74) are substantially moved horizontally at a pivot (84), it is pointed out that they can be substantially moved in a parallel path 72 of Fig. 4).

**Hunter in view Carlsson**

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Hunter (4,768,642) discloses a method for handling articles (70), comprising handling the articles by a gripper mechanism having finger-like gripper (26,26,28) (see Figs. 1 and 1A) arranged in a substantially comb-like manner and that moved in a parallel path. Note that the gripper element has parallel arms (30,32) guided by bearings (34,36) to be able to move in a horizontal path and push the articles as shown in figures 1 and 1A. Hunter (4,768,642) also shows another embodiment having a plate (102) in figure 5 to push the articles. Hunter (4,768,642) does not show a method of picking up the articles. However, Carlsson et al. (3,822,528) teaches a gripper element having a horizontal plate (11) and a pivotal end plate (12) to pick up a row of pouches as shown in figures 1-8. To



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those skilled in the art would provide the gripper element (28) of Hunter (4,768,642) by providing an end plate (12) of Carlsson et al. (3,822,528) on the distal ends of the Hunter's horizontal plate (28) so that the modified Hunter's device not only push the articles but also pick up the plurality of articles or pouches and moved towards the table (5) (Fig. 1).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAUL T. CHIN/  
Primary Examiner, Art Unit 3652